

ARKANSAS SUPREME COURT

No. CR 06-506

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered June 1, 2006

PAUL BARRON, SR.
Petitioner

PRO SE MOTIONS FOR RULE ON
CLERK AND TO PROCEED IN *FORMA*
PAUPERIS [CIRCUIT COURT OF
CARROLL COUNTY, CR 2000-124,
HON. ALAN DAVID EPLEY, JUDGE]

v.

STATE OF ARKANSAS
Respondent

MOTION FOR RULE ON CLERK
GRANTED; MOTION TO PROCEED *IN*
FORMA PAUPERIS DENIED

PER CURIAM

A jury found petitioner Paul Barron, Sr., guilty of manufacturing a controlled substance, methamphetamine, and sentenced him to 180 months' imprisonment in the Arkansas Department of Correction. The judgment and commitment order was entered on January 8, 2002, and petitioner's retained counsel, Phillip A. Moon, timely filed a notice of appeal on January 18, 2002, indicating that the transcript had been ordered. Petitioner, now proceeding *pro se*, brings this motion requesting this court to compel counsel to perfect the appeal.¹

Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal provides that trial counsel,

¹ Because the notice of appeal was timely filed, the present motion involves the docketing of the record, and the relief sought is under Ark. Sup. Ct. R. 2-2. The motion is not therefore subject to dismissal as untimely for failure to comply with the eighteen-month time limit under Ark. R. App. P.--Crim. 2, as would be a motion for belated appeal that involves the notice of appeal. See *McGahey v. State*, 359 Ark. 252, ___ S.W.3d ___ (2004); *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004).

whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. *See Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2002). The partial record before us does not indicate Mr. Moon was permitted to withdraw as counsel, nor is there any order dismissing the appeal or otherwise relieving Mr. Moon of his obligation to perfect an appeal.

Once the notice of appeal was filed, Mr. Moon was obligated to perfect the appeal. *Gooden v. State*, 344 Ark. 291, 40 S.W.3d 271 (2001) (*per curiam*); *Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*). Because there is no order dismissing the appeal or otherwise relieving Mr. Moon from his obligation to perfect the appeal, Mr. Moon was obligated to lodge the record in the appellate court and continue in his representation of petitioner. *See Rogers v. State*, 353 Ark. 359, 107 S.W.3d 166 (2003) (*per curiam*). It is well settled that under no circumstances may an attorney who has not been relieved by the court abandon an appeal. *Id.* at 361, 107 S.W.3d at 167. The fact that Mr. Moon did not perfect the appeal clearly indicates that he has failed in his duty to petitioner. *See id.*; *Gooden*, 344 Ark. at 292, 40 S.W.3d at 272.

As Mr. Moon remains responsible for representing petitioner on appeal, our clerk is directed to lodge the partial record. Mr. Moon is directed to file a petition for writ of *certiorari* within thirty days to call up the entire record, or that portion of it necessary for an appeal to this court. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

We note that petitioner has made a request to this court to proceed *in forma pauperis* on appeal. We deny the motion to proceed *in forma pauperis*. Mr. Moon represented appellant as private counsel, and appellant had been released on a \$50,000 bond prior to his incarceration. The

notice of appeal indicated the record had been ordered.

Motion for rule on clerk granted; motion to proceed *in forma pauperis* denied.